

Mike DeWine
Ohio Attorney General

Victoria D. Garry (Ohio Bar. No. 0037014)
Assistant Ohio Attorney General
Collections Enforcement
1600 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
(513) 852-1536
(513) 852-3484 (Fax)
e-mail: victoria.garry@ohioattorneygeneral.gov

Attorney for Ohio Department of Taxation

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:	: Case No. 08-35653 (KRH)
	: Jointly Administered
CIRCUIT CITY STORES, INC., et al.	: Chapter 11
	: Debtors.

**RESPONSE OF OHIO DEPARTMENT OF TAXATION TO LIQUIDATING
TRUST'S EIGHTEENTH OMNIBUS OBJECTION TO CLAIMS FILED BY
TAXING AUTHORITIES (REDUCTION OF CERTAIN IMPARTIALLY VALID
CLAIMS; DISALLOWANCE OF CERTAIN INVALID CLAIMS;
DISALLOWANCE OF CERTAIN DUPLICATE CLAIMS; RECLASSIFICATION
OF CERTAIN CLAIMS; DISALLOWANCE OF CERTAIN LATE FILED
CLAIMS; DISALLOWANCE OR REDUCTION OF CERTAIN INVALID
CLAIMS; AND FIXING THE AMOUNT OF CERTAIN CLAIMS)**

The Ohio Department of Taxation ("Tax"), by and through Ohio Attorney General Mike DeWine, hereby responds to the Liquidating Trust's Eighteenth Omnibus Objection to Claims filed February 28, 2011 (doc. #10062). The Liquidating Trust asserts that claim numbers 565, 1628 and 15186 filed by Tax should be disallowed and expunged as the claims were amended by claim 15187. The Liquidating Trust is

incorrect. The claims were not amended by claim 15187 and all of the claims should be allowed as filed.

The Liquidating Trust further asserts that claim number 13066 filed in the amount of \$65,500 should be disallowed as the Liquidating Trust's books and records reflect no liability. Under 11 U.S.C. Section 502, a proof of claim is deemed allowed unless an objection is filed to the same. As filed, the proof of claim "creates a prima facie valid claim". The burden is on the objecting party, here, the Liquidating Trust, to "produce sufficient evidence to negate this prima facie validity of the claim". In re Mission of Care, Inc., 164 B.R. 877 (Bankr.De.1994). The Liquidating Trust's bare assertion that its records do not show any liability to Tax is insufficient to meet that burden.

Finally, the Liquidating Trust asserts that claim number 15187 should be reduced to \$296,094.20 on the basis that "Claimant estimated CAT tax, estimate was inflated". The Liquidating Trust fails to mention that the Debtor has a duty to file tax returns post petition but failed to do so. Tax had no alternative than to file an estimated amount. Until an accurate return is filed, the claim filed by Tax must stand.

Wherefore, for the above reasons, Tax respectfully requests that the Court deny the Liquidating Trust's objection and allow the proof of claims filed by Tax.

Respectfully submitted,

Mike DeWine
Ohio Attorney General

/s/ Victoria D. Garry
VICTORIA D. GARRY (0037014)
Assistant Attorney General
1600 Carew Tower
441 Vine Street

Cincinnati, Ohio 45202
(513) 852-1536
(513) 852-3484 (Fax)
victoria.garry@ohioattorneygeneral.gov
Attorney for Ohio Department of Taxation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Liquidating Trust's Eighteenth Omnibus Objection was served electronic filing this 7th day of April, 2011 upon the Service List.

/s/ Victoria D. Garry
VICTORIA D. GARRY (0037014)